STATE OF MICHIGAN

COURT OF APPEALS

DEPARTMENT OF TRANSPORTATION,

Plaintiff-Appellant,

v

INITIAL TRANSPORT, INC., and EMPLOYERS MUTUAL CASUALTY COMPANY,

Defendants-Appellees,

and

GREAT WEST CASUALTY COMPANY and KIRK NATIONAL LEASING COMPANY a/k/a KIRK NATIONALEASE COMPANY,

Defendants.

FOR PUBLICATION
July 26, 2007
9:00 a.m.

No. 272560
Wayne Circuit Court
LC No. 04-430645-ND

Official Reported Version

Before: Whitbeck, C.J., and Murphy and Cooper, JJ.

WHITBECK, C.J. (*concurring in part and dissenting in part*).

I concur with the majority's conclusion that the trial court erred by denying the Michigan Department of Transportation's (MDOT) motion for statutory interest based on Employers Mutual Insurance Company's (Employers) failure to unconditionally tender the $1 million under Initial Transport, Inc.'s (Initial), no-fault insurance policy.

I write separately, however, because I disagree with the majority's conclusion that the Motor Carrier Safety Act (MCSA), MCL 480.11 *et seq*., provides property protection benefits separate and above the $1 million limit set by the Michigan no-fault act, MCL 500.3101 *et seq.* I believe that the MCSA is a regulatory act that simply (1) sets forth minimum amounts of financial responsibility for certain motor carriers and (2) imposes a civil penalty for the failure to comply with those minimum requirements. I disagree with the majority's conclusion that the MCSA creates a private remedy for a third party against an insured or an insurer. Indeed, the majority concedes that no such remedy is provided anywhere in that statutory scheme. I would hold that the no-fault act is the exclusive remedy available to MDOT for the property damage sustained in this case. Therefore, I would reverse and remand on the interest issue, but affirm on the benefits-limit issue.

As the majority points out, neither party disputes that approximately $3.5 million in damage was done to the overpass as a result of the October 6, 2003, accident. Further, the parties do not dispute that, because the semi-tractor and the trailer are insured under one policy of insurance and only one accident occurred, MDOT is precluded from collecting more than $1 million from Employers under the no-fault act, which provides in pertinent part as follows:

> Property protection insurance benefits consist of the lesser of reasonable repair costs or replacement costs less depreciation and, if applicable, the value of loss of use. However, *property protection insurance benefits paid under 1 policy for damage to all tangible property arising from 1 accident shall not exceed $1,000,000.00*.[1]

By its plain language, § 3121(5) of the no-fault act expressly limits liability for damage to property arising out of a motor vehicle accident to $1 million.

What the parties are disputing is whether MDOT's entire allowable recovery is limited to the $1 million no-fault cap on property protection insurance benefits or whether MDOT may obtain additional recovery under the MCSA. MDOT advocates the latter and contends that the MCSA provides an additional layer of benefits that are separate and distinct from the $1 million property protection insurance benefit limit set forth under the no-fault act. Specifically, MDOT argues that because MCL 480.11a requires a transporter of hazardous materials to obtain certain minimum levels of financial security, it is entitled to recover for damages in an amount that exceeds the $1 million no-fault limit. I disagree. I do not agree that the Legislature, by adopting the MCSA, intended to impose additional liability over and above the $1 million limit on property protection insurance benefits contained in the no-fault act.

The purpose of the MCSA is described in its preamble as follows:

> An act to promote safety upon highways open to the public by regulating the operation of certain vehicles; to provide consistent regulation of these areas by state agencies and local units of government; . . . to establish certain violations of shippers offering certain materials for transportation; . . . [and] to provide penalties for the violation of this act . . . .[2]

To effectuate this purpose, in enacting the MCSA, Michigan adopted by reference portions of the federal Motor Carrier Safety Act and the federal motor carrier safety regulations.[3] The purpose of the federal motor carrier safety regulations is to prescribe "the minimum levels of financial responsibility required to be maintained by motor carriers of property operating motor vehicles

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[1] MCL 500.3121(5) (emphasis added).

[2] Preamble to MCL 480.11 *et seq*. A preamble is not binding authority for construing an act, but this Court has recognized that a preamble can be useful for interpreting statutory purpose and scope. *King v Ford Motor Credit Co*, 257 Mich App 303, 311-312; 668 NW2d 357 (2003).

[3] MCL 480.11a(1).

in interstate, foreign, or intrastate commerce" and to "create additional incentives to motor carriers to maintain and operate their vehicles in a safe manner and to assure that motor carriers maintain an appropriate level of financial responsibility for motor vehicles operated on public highways."[4]

49 CFR part 387 is among the many portions of the federal motor carrier safety regulations adopted by the MCSA. Under 49 CFR 387.7(a), "[n]o motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility." 49 CFR 387.9(3) requires private transporters of hazardous material, such as oil or gasoline, to maintain a minimum of $1 million in financial responsibility.[5] A violation of the federal rules is punishable by a "civil penalty of no more than $11,000 for each violation."[6] Further, "any person, driver, or motor carrier . . . who violates . . . or permits or requires any person to violate [the MCSA] or a rule promulgated under [the MCSA], is responsible for a state civil infraction and may be ordered to pay a fine of not more than $250.00 for each violation."[7]

MDOT argues that because 49 CFR 387.9 sets forth minimum levels of financial responsibility based on the type of material transported by a motor carrier, an injured third party has access to an *additional* level of security. In other words, MDOT argues that the Legislature, by adopting the federal financial responsibility requirements, intended an exception to the $1 million limit on property protection benefits set forth in the no-fault act. I find this argument unpersuasive.

Although the MCSA sets forth minimum amounts of financial responsibility for certain motor carriers, the MCSA does not create any private cause of action. Further, there is no indication in the MCSA, or in any other statute, that Michigan's adoption of the federal financial responsibility requirements for certain motor carriers creates additional coverage or liability exposure beyond the requirements of the no-fault act. Nowhere does the MCSA or the no-fault act state that the $1 million financial responsibility requirement is recoverable property protection insurance *in addition* to the no-fault act's $1 million property damage limitation. Moreover, the MCSA does not provide any method for asserting a cause of action for damages. As stated, the only "liability" that may be imposed under the MCSA is a fine or a penalty for failing to comply with the federal regulations adopted in the MCSA. I conclude, therefore, that the Legislature has exclusively reserved to the no-fault act the rights of third parties to recover for damage to tangible property.

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[4] 49 CFR 387.1.

[5] 49 CFR 387.9 also requires a transporter of liquefied petroleum to maintain a minimum of $5 million in financial responsibility. The implications of this $5 million requirement, however, are not presented for resolution before this panel.

[6] 49 CFR 387.17.

[7] MCL 480.17(1).

The no-fault act requires that the owner or registrant of a motor vehicle maintain benefits for property protection insurance.[8] The goal of the no-fault act is to ensure that automobile accident victims receive compensation for their injuries in the form of property protection insurance benefits without regard to fault.[9] Therefore, certain minimum levels of coverage are mandated as a prerequisite for automobile registration in this state.[10] Michigan's financial responsibility act and the no-fault act require minimum liability insurance coverage in the amount of $20,000 for injury or death of one person in any one accident, $40,000 for injury or death of 2 or more people in any one accident, and $10,000 for injury to or destruction of the property of others.[11] In light of these general minimum coverage requirements, I agree with the majority's statements that the only reasonable purpose for requiring insurance is to effectuate coverage of risk and that injured parties ought to be able to recover for damages under an available policy. However, I do not agree that these premises lead to the conclusion that the MCSA has implicitly created an exception to the $1 million no-fault cap on recovery for property damage. Indeed, the only exception that I see in the MCSA is an exception for motor carriers to the general minimum policy requirements for ordinary vehicles stated above.[12]

As the majority correctly states, the transport of hazardous property poses a greater risk in accidents than that posed by the transport of nonhazardous materials. This merits the imposition of additional levels of minimum protection. Therefore, that the MCSA requires higher minimum levels of coverage for vehicles transporting hazardous materials merely recognizes that such vehicles are more likely to cause significant damage that may drastically exceed Michigan's generally applicable minimum levels of coverage.

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[8] MCL 500.3101(1).

[9] *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 36-37; 528 NW2d 681 (1995); *Farmers Ins Exch v Farm Bureau Gen Ins Co of Michigan*, 272 Mich App 106, 118; 724 NW2d 485 (2006).

[10] MCL 257.518; MCL 500.3009; MCL 500.3131.

[11] MCL 500.3009(1) states:

> An automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall not be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless the liability coverage is subject to a limit, exclusive of interest and costs, of not less than $20,000.00 because of bodily injury to or death of 1 person in any 1 accident, and subject to that limit for 1 person, to a limit of not less than $40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident, and to a limit of not less than $10,000.00 because of injury to or destruction of property of others in any accident.

[12] See MCL 500.3009(1).

Further, I find it significant that the MCSA's $1 million financial responsibility requirement is intended to cover the motor carrier for property damage, *as well as* for bodily injuries,[13] while the $1 million no-fault act limit is specifically aimed at property damage alone. Thus, the goals of the two acts notably differ. The goal of the MCSA is to set forth *minimum levels* of financial responsibility required to be maintained by motor carriers for all types of damage, including both property damage and bodily injury, to ensure that sufficient amounts of insurance will be available to cover potentially catastrophic accidents. Conversely, the no-fault act in MCL 500.3121(5) simply provides that an insurer is responsible for paying no more than $1 million to cover property damage. Thus, § 3121(5) sets forth the *maximum* recovery available under no-fault law for property damage. Stated differently, the MCSA requires a $1 million *minimum* level of financial responsibility to cover *all* potential damage caused by certain motor carriers, but in the event such a motor carrier causes property damage, recovery for that *property damage* is nevertheless limited by the $1 million no-fault *maximum* recovery allowance.

As can be seen in this case, property damage alone caused by an accident involving a motor carrier of hazardous material can well exceed the $1 million no-fault act limit. But it is within the power of the Legislature, not this Court, to create an exception to the $1 million property-damage limit for motor carriers if such an exception is indeed deemed warranted. Absent express direction from the Legislature, the financial responsibility requirements must be read within the framework of the no-fault act. The MCSA only requires that a motor carrier have a minimum level of financial responsibility. There is no reason to suppose that the Legislature, by enacting the MCSA and adopting portions of the federal regulations, intended to impliedly provide an exception to the limits on property damage benefits set forth in § 3121(5) of the no-fault act.

Under the plain language of § 3121(5) of the no-fault act, the state can only recover $1 million in property protection benefits for this one accident covered under one policy. The $4 million coverage provided in the umbrella policy cannot provide additional property-damage recovery to the state contrary to the statutory limit. The no-fault act is MDOT's sole remedy because the MCSA is merely a regulatory act setting forth the minimum amount of coverage necessary for a carrier of hazardous material. Therefore, in my opinion, the trial court properly denied MDOT's motion for summary disposition and granted defendants' motion for summary disposition because the MCSA does not provide additional property protection benefits to MDOT. I would hold that the property protection insurance benefits of the no-fault act are MDOT's exclusive remedy for payment for the property damage sustained in this case.

I would reverse and remand on the interest issue, but affirm on the benefits-limit issue.

/s/ William C. Whitbeck

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[13] 49 CFR 387.1; MCL 480.11a.